

21 C.J.S. Courts § 235

Corpus Juris Secundum | May 2023 Update

Courts

M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc; and Lonnie E. Griffith, Jr., J.D.

VI. Rules of Adjudication, Decisions, and Opinions

C. Law of the Case

§ 235. Nature of doctrine as discretionary rule of practice

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Courts](#)  99(1)

The doctrine of law of the case is a discretionary rule of practice, and deviation from it is allowed under certain circumstances.

The law of the case doctrine does not constitute a limitation on the court's authority¹ but rather is a discretionary² rule of practice³ governed by the particular circumstances of the case,⁴ which promotes the finality and efficiency of the judicial process by protecting against the continued litigation of settled issues.⁵ Essentially, the doctrine means that a court ordinarily ought to respect and follow its own rulings made earlier in same case⁶ and should not reopen issues decided in its earlier stages.⁷ However, it has also been said that although the doctrine is not an inexorable command, it is waived only for the most cogent of reasons.⁸

Departure from the application of the doctrine is allowed in exceptional circumstances,⁹ as when there has been an intervening change in the controlling law¹⁰ or a substantial change in the facts or evidence,¹¹ or if the prior holding was clearly erroneous and would create a manifest injustice.¹² The law of the case does not have the inexorable effect of res judicata,¹³ and does not preclude a court from reconsidering an earlier ruling, if the court believes that the ruling was probably erroneous and that more harm would be done by adhering to the earlier rule than from the delay incident to reconsideration.¹⁴

CUMULATIVE SUPPLEMENT

Cases:

While the law of the case doctrine, which forecloses reconsideration of issues that were decided, or that could have been decided, during prior proceedings, does not rigidly bind Court of Appeals to its former decisions, the Court generally adheres to prior decisions in subsequent stages of the same case unless cogent and compelling reasons militate otherwise. [Choi v. Tower Research Capital LLC](#), 2 F.4th 10 (2d Cir. 2021).

Law-of-the-case doctrine dictates that courts must follow decisions made in earlier proceedings to prevent relitigation of settled issues in a case, thereby protecting settled expectations of parties, ensuring uniformity of decisions, and promoting judicial efficiency. [Vogt v. State Farm Life Insurance Company](#), 19 F.4th 1071 (8th Cir. 2021).

The law of the case doctrine is subject to three exceptions that may arise when (1) the decision is clearly erroneous and its enforcement would work a manifest injustice, (2) intervening controlling authority makes reconsideration appropriate, or (3) substantially different evidence was adduced at a subsequent trial. [Grand Canyon Trust v. Provencio](#), 26 F.4th 815 (9th Cir. 2022).

Under law of the case doctrine, court may exercise its discretion to entertain relitigation of settled issues if the failure to do so would work a manifest injustice. [Entek GRB, LLC v. Stull Ranches, LLC](#), 840 F.3d 1239 (10th Cir. 2016).

The law of the case doctrine does not preclude reconsideration of previously decided issues in extraordinary circumstances such as where (1) new evidence is available, (2) a supervening new law has been announced, or (3) the earlier decision was clearly erroneous and would create manifest injustice. [Wayne Land and Mineral Group, LLC v. Delaware River Basin Commission](#), 331 F.R.D. 583 (M.D. Pa. 2019).

The underlying purpose of the law of the case doctrine is to maintain consistency and avoid reconsideration of matters once decided during the course of a single, continuous lawsuit. [State v. Garcia](#), 516 P.3d 578 (Idaho 2022).

The law-of-the-case doctrine promotes judicial efficiency and protects parties settled expectations by preventing parties from relitigating settled issues within a single action. [Spratt v. Crete Carrier Corporation](#), 311 Neb. 262, 971 N.W.2d 335 (2022).

The law of the case doctrine is a flexible rule that may be disregarded when a subsequent ruling can be based on an expanded record. [DiMaggio v. Tucker](#), 288 A.3d 981 (R.I. 2023).

[END OF SUPPLEMENT]

Westlaw. © 2023 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

1 U.S.—[Musacchio v. U.S.](#), 136 S. Ct. 709, 193 L. Ed. 2d 639 (2016); [Pepper v. U.S.](#), 562 U.S. 476, 131 S. Ct. 1229, 179 L. Ed. 2d 196 (2011); [Castro v. U.S.](#), 540 U.S. 375, 124 S. Ct. 786, 157 L. Ed. 2d 778 (2003); [Arizona v. California](#), 460 U.S. 605, 103 S. Ct. 1382, 75 L. Ed. 2d 318, 36 Fed. R. Serv. 2d 11 (1983), decision supplemented, 466 U.S. 144, 104 S. Ct. 1900, 80 L. Ed. 2d 194 (1984); [In re Peters](#), 642 F.3d 381 (2d Cir. 2011); [Guevara v. Republic of Peru](#), 608 F.3d 1297 (11th Cir. 2010).

Ala.—[Ex parte Discount Foods, Inc.](#), 789 So. 2d 842 (Ala. 2001).

Cal.—[Clemente v. State of California](#), 40 Cal. 3d 202, 219 Cal. Rptr. 445, 707 P.2d 818 (1985).

Ill.—[In re Christopher K.](#), 217 Ill. 2d 348, 299 Ill. Dec. 213, 841 N.E.2d 945 (2005).

- 2 U.S.—*Musacchio v. U.S.*, 136 S. Ct. 709, 193 L. Ed. 2d 639 (2016); *Pepper v. U.S.*, 562 U.S. 476, 131 S. Ct. 1229, 179 L. Ed. 2d 196 (2011); *U. S. v. U. S. Smelting Refining & Min. Co.*, 339 U.S. 186, 70 S. Ct. 537, 94 L. Ed. 750 (1950); *U.S. v. All Funds on Deposit with R.J. O'Brien & Associates*, 783 F.3d 607 (7th Cir. 2015), cert. denied, 136 S. Ct. 1374 (2016).

Ala.—*Ex parte Discount Foods, Inc.*, 789 So. 2d 842 (Ala. 2001).

Colo.—*Sidman v. Sidman*, 2016 COA 44, 2016 WL 1165756 (Colo. App. 2016).

La.—*Correro v. Ferrer*, 50-476 La. App. 2 Cir. 3/2/16, 2016 WL 852422 (La. Ct. App. 2d Cir. 2016).
 - 3 U.S.—*Musacchio v. U.S.*, 136 S. Ct. 709, 193 L. Ed. 2d 639 (2016); *U. S. v. U. S. Smelting Refining & Min. Co.*, 339 U.S. 186, 70 S. Ct. 537, 94 L. Ed. 750 (1950); *Guevara v. Republic of Peru*, 608 F.3d 1297 (11th Cir. 2010).

Ala.—*Bagley ex rel. Bagley v. Creekside Motors, Inc.*, 913 So. 2d 441, 56 U.C.C. Rep. Serv. 2d 853 (Ala. 2005).

Cal.—*Clemente v. State of California*, 40 Cal. 3d 202, 219 Cal. Rptr. 445, 707 P.2d 818 (1985).

La.—*Correro v. Ferrer*, 50-476 La. App. 2 Cir. 3/2/16, 2016 WL 852422 (La. Ct. App. 2d Cir. 2016).

Ohio—*Shimko v. Lobe*, 103 Ohio St. 3d 59, 2004-Ohio-4202, 813 N.E.2d 669 (2004).

R.I.—*Taveira v. Solomon*, 528 A.2d 1105 (R.I. 1987).

Wis.—*State v. Brady*, 130 Wis. 2d 443, 388 N.W.2d 151 (1986).
 - 4 Tex.—*Kay v. Sandler*, 704 S.W.2d 430 (Tex. App. Houston 14th Dist. 1985), writ refused n.r.e., (Apr. 2, 1986).
- Original actions**
- Although the United States Supreme Court has been reluctant to import wholesale law-of-the-case principles into original actions, prior rulings in those cases should be subject to general principles of finality and repose, absent changed circumstances or unforeseen issues that were not previously litigated.
- U.S.—*Wyoming v. Oklahoma*, 502 U.S. 437, 112 S. Ct. 789, 117 L. Ed. 2d 1 (1992).
 - 5 U.S.—*In re Energy Future Holdings Corp.*, 546 B.R. 566 (Bankr. D. Del. 2016).
 - 6 U.S.—*Ellis v. U.S.*, 313 F.3d 636 (1st Cir. 2002).

Haw.—*Chun v. Board of Trustees of Employees' Retirement System of State of Hawaii*, 92 Haw. 432, 992 P.2d 127 (2000).
 - 7 U.S.—*Agostini v. Felton*, 521 U.S. 203, 117 S. Ct. 1997, 138 L. Ed. 2d 391, 119 Ed. Law Rep. 29, 37 Fed. R. Serv. 3d 1051 (1997).
 - 8 Utah—*Gildea v. Guardian Title Co. of Utah*, 2001 UT 75, 31 P.3d 543 (Utah 2001).
 - 9 U.S.—*J.E.T.S., Inc. v. U.S.*, 838 F.2d 1196 (Fed. Cir. 1988).
 - 10 U.S.—*U.S. v. Matthews*, 312 F.3d 652 (5th Cir. 2002); *Rimbert v. Eli Lilly and Co.*, 647 F.3d 1247 (10th Cir. 2011); *Lebron v. Secretary of Florida Dept. of Children and Families*, 772 F.3d 1352, 96 Fed. R. Evid. Serv. 113 (11th Cir. 2014).

Ky.—*Brown v. Com.*, 313 S.W.3d 577 (Ky. 2010).

- Mo.—American Eagle Waste Industries, LLC v. St. Louis County, 379 S.W.3d 813 (Mo. 2012).
- Wash.—Roberson v. Perez, 156 Wash. 2d 33, 123 P.3d 844 (2005).
- 11 U.S.—U.S. v. Matthews, 312 F.3d 652 (5th Cir. 2002); Rimbart v. Eli Lilly and Co., 647 F.3d 1247 (10th Cir. 2011); Lebron v. Secretary of Florida Dept. of Children and Families, 772 F.3d 1352, 96 Fed. R. Evid. Serv. 113 (11th Cir. 2014); Kori Corp. v. Wilco Marsh Buggies and Draglines, Inc., 761 F.2d 649 (Fed. Cir. 1985).
- Del.—State v. Wright, 131 A.3d 310 (Del. 2016) (changed circumstances).
- D.C.—Jung v. George Washington University, 875 A.2d 95, 198 Ed. Law Rep. 911 (D.C. 2005), opinion amended on other grounds on reh'g, 883 A.2d 104 (D.C. 2005).
- Ga.—Harrison v. Dorsey, 184 Ga. App. 870, 363 S.E.2d 151 (1987).
- Iowa—State v. Grosvenor, 402 N.W.2d 402 (Iowa 1987).
- Or.—State v. Langley, 331 Or. 430, 16 P.3d 489 (2000).
- R.I.—Goodman v. Turner, 512 A.2d 861 (R.I. 1986).
- 12 U.S.—Pepper v. U.S., 562 U.S. 476, 131 S. Ct. 1229, 179 L. Ed. 2d 196 (2011); Agostini v. Felton, 521 U.S. 203, 117 S. Ct. 1997, 138 L. Ed. 2d 391, 119 Ed. Law Rep. 29, 37 Fed. R. Serv. 3d 1051 (1997); Arizona v. California, 460 U.S. 605, 103 S. Ct. 1382, 75 L. Ed. 2d 318, 36 Fed. R. Serv. 2d 11 (1983), decision supplemented, 466 U.S. 144, 104 S. Ct. 1900, 80 L. Ed. 2d 194 (1984); Pope v. Secretary, Florida Dept. of Corrections, 752 F.3d 1254 (11th Cir. 2014), cert. denied, 135 S. Ct. 1550, 191 L. Ed. 2d 643 (2015).
- Ky.—Wright v. Carroll, 452 S.W.3d 127 (Ky. 2014).
- Mo.—American Eagle Waste Industries, LLC v. St. Louis County, 379 S.W.3d 813 (Mo. 2012).
- Wash.—Roberson v. Perez, 156 Wash. 2d 33, 123 P.3d 844 (2005).
- Manifest misapplication of existing principles**
- Cal.—Searle v. Allstate Life Ins. Co., 38 Cal. 3d 425, 212 Cal. Rptr. 466, 696 P.2d 1308 (1985).
- 13 Haw.—Chun v. Board of Trustees of Employees' Retirement System of State of Hawaii, 92 Haw. 432, 992 P.2d 127 (2000).
- Mont.—State v. Gilder, 2001 MT 121, 305 Mont. 362, 28 P.3d 488 (2001).
- 14 Haw.—Chun v. Board of Trustees of Employees' Retirement System of State of Hawaii, 92 Haw. 432, 992 P.2d 127 (2000).